

In the Matter of)
Federal-State Joint Board on Universal Service) CC Docket No. 96-45
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To: The Federal-State Joint Board

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SUMMARY

In this proceeding, the Joint Board must formulate a recommendation to the Commission regarding reform of the high cost support mechanisms. In the first round of comments in this proceeding and in its initial comments on the present reform proposals, Dobson has laid out a roadmap for reform. In these reply comments, Dobson responds to specific assertions and assumptions in other parties' initial comments in response to the four specific proposals contained in the *Public Notice*.

Specifically, Dobson debunks the rural LECs' positions that an embedded-cost approach is necessary for the financial viability of rural LECs, and that the health of rural wireline carriers is particularly important for the future economic development of, or broadband deployment in, rural America. Rural consumers want mobile service, and wireless deployment, in turn, drives economic development in rural areas. Wireless carriers like Dobson also are in the midst of deploying high-speed data services, demonstrating that LECs are not the only source of broadband services. Rural LECs also understate their own ability to survive in a competitive environment. Dobson's own experience has shown that it is possible to build a telecommunications business in a competitive environment in rural America using primarily private capital. This is not to say that universal service support is unimportant, but simply to put into perspective the scope of such dependence.

Further, reform of the high cost support mechanisms cannot be undertaken alone, but must be considered in conjunction with intercarrier compensation reform. A primary aspect of high cost reform is the selection of a mechanism to determine the appropriate amount of support that is necessary for ETCs providing service in a given area. A necessary part of that determination will involve resolving pending claims that revenues currently flowing through the intercarrier compensation system are necessary for the preservation of universal service. Dobson urges the Commission to reject any further such claims.

Finally, the record reflects broad opposition to giving states primary responsibility for the allocation of federal universal service support. As Dobson argued in its initial comments, there are significant legal and practical issues that militate against such an approach.

Before the
Federal Communications Commission
Washington, DC 20554

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**REPLY COMMENTS OF DOBSON CELLULAR SYSTEMS, INC., ON JOINT BOARD
HIGH COST PROPOSALS**

Dobson Cellular Systems, Inc. (“Dobson”) submits the following reply comments in response to the initial comments filed in the above-captioned proceeding seeking comment on four specific proposals for reform of the high cost universal service support systems.¹ In the first round of comments in this proceeding and in its initial comments on the present reform proposals, Dobson has laid out a roadmap for reform. In these reply comments, Dobson responds to specific assertions and assumptions in other parties’ initial comments in response to the four specific proposals contained in the *Public Notice*.

**I. THE RURAL LECS’ ARGUMENTS FOR RETAINING HIGH COST
SUPPORT BASED ON EMBEDDED COSTS ARE UNFOUNDED AND
ALARMIST**

Dobson has argued in this proceeding and before the Commission that high cost support amounts should be determined based on an objective measure of cost, such as a forward-looking

¹ *Federal-State Joint Board on Universal Service Seeks Comment on Proposals to Modify the Commission’s Rules Relating to High-Cost Cost Universal Service Support*, CC Docket No. 96-45, *Public Notice*, FCC 05J-1 (rel. Aug. 17, 2005) (“*Public Notice*”). Dobson filed initial comments in this proceeding which lay out its basic positions on high cost reform, and also describe the company and its perspective on these issues. Comments of Dobson Cellular Systems, Inc., CC Docket No. 96-45 (filed Sept. 30, 2005) (“Dobson comments”).

model, rather than incumbents' embedded costs.² Most rural local exchange carrier ("LEC") commenters, in contrast, argued that support should continue to be computed based on embedded costs.³ Their arguments, however, reflect an unrealistic and unsubstantiated pessimism regarding their own competitive prospects, and an over-assessment of their importance, in today's competitive telecommunications marketplace and to rural economic development.

A. Rural LECs Do Not Need a Regulatory Environment That Shelters Them From All Financial Risk in Order to Remain Viable

Most of the rural LECs' comments explicitly argue or implicitly assume that rural LECs require a regulatory climate that shelters them from all financial risk in order to maintain investment in their companies and their networks.⁴ Their comments suggest that the rural LEC industry is a delicate house of cards that will suddenly collapse unless every excessive dime of the current subsidy system is maintained. None of these commenters, however, presents any evidence supporting this hypothesis.

² See, e.g., Dobson comments at 2-7; Comments of Dobson Cellular Systems, Inc., WC Docket No. 05-195 et al. (filed Oct. 18, 2005) ("Dobson USF Administration comments") at 9-10.

³ See, e.g., USTelecom comments at 6; OPASTCO comments at 6; Balhoff & Rowe comments at 34-38; Texas Statewide comments at 9-11. Unless otherwise noted, parties' comments cited herein refer to initial comments in response to the *Public Notice* filed in this docket on or about September 30, 2005.

⁴ See, e.g., ITC comments at 11-12 (shift away from embedded cost recovery will "drive away potential investors and lenders and/or drive up the costs of investment capital"); Balhoff & Rowe comments at 26-29 ("Investors are not willing to support long-term capital commitments in this environment"); WTA/ITTA comments at 10-14 ("increased uncertainty will reduce or destroy the financial capability of many small carriers to make infrastructure investments by driving away potential investors and lenders and/or by driving up the costs of their investment capital"); TDS comments at 5 ("If support levels became uncertain and were materially reduced, rural carriers' financial capital would be depleted just to maintain basic services, and investors likely would not make financing available for new advanced services"); USTelecom comments at 7 ("changing the basis of support to a forward-looking cost methodology is likely to result in many carriers being unable to recover the costs that are actually incurred in building, maintaining, upgrading, and expanding their networks, possibly preventing such carriers from offering the most advanced services or even any service").

Unquestionably, a competitive marketplace presents less certainty and a greater need for creativity, agility, and operating efficiency than a rate-regulated monopoly environment. Dobson is well aware of this, having operated in the highly competitive wireless environment since its inception. Dobson has consistently maintained a focus on serving rural areas, all the while successfully pursuing financing in the private equity markets and operating in a competitive industry. It can be done. To run a successful telecommunications business in rural America, it is not necessary for the federal government to pay most of the tab. Rural LECs, of course, have become accustomed to more than just running successful businesses. They currently enjoy an outlandishly high rate of return (11.25% in the interstate jurisdiction) on their investments, and have access to sources of capital not available to other businesses (such as the Department of Agriculture's Rural Utilities Service loan program). As state commenters note, their end-user rates are often entirely unregulated;⁵ thus, their claims of being subject to greater accountability for the support they receive are entirely specious. These companies are, in short, enjoying a level of profitability and security that is virtually unheard-of in American business.

Therefore, it is not surprising that the prospect of making a transition to a competitive environment, without a guaranteed high rate of return, would be stressful and frightening to rural LECs. But there simply is no reason to believe that these carriers would be unable to invest in their networks or maintain their businesses without this archaic regulatory structure. It is possible to devise a regulatory structure that provides predictable and sufficient universal service

⁵ See, e.g., Oregon PUC comments at 8 ("In Oregon and in many other states, small incumbent rural ETCs' consumer rates are not regulated."). This also demonstrates the spuriousness of the rural LECs' arguments that they face greater accountability than other ETCs.

support without maintaining the excesses and competitive neutrality problems inherent in the current system.

A new universal service paradigm is required both by the statute and by the exigencies of changing technology. The rise of wireless services, email, and the advent of voice over Internet protocol (“VoIP”) services – all of which undermine the relevance of wireline voice services – are inexorable and accelerating. The present universal service system’s ability to protect rural incumbent LECs from these forces already is being strained. The Commission owes it to the rural LECs to begin weaning them now before technological change forces the Commission’s hand – with truly unpredictable results.

In addition, the Commission has a responsibility to do so under the Act. The 1996 Act, as the Commission well knows, was a fundamentally “pro-competitive” piece of legislation,⁶ and the Commission itself has expressed its faith in competitive markets as the best method of structuring and regulating the industry.⁷ Consistent with the pro-competitive character of the 1996 Act, Section 214(e) explicitly provides for the designation of competitive ETCs, requiring that competitive ETCs “shall” be designated in the territories served by “non-rural” (*i.e.*, large)

⁶ The 1996 Act “provide[s] for a *procompetitive, de-regulatory national policy framework* designed to accelerate rapidly private sector deployment of advanced telecommunications and information technologies and services to all Americans by *opening all telecommunications markets to competition.*” H.R. Conf. Rep. No. 104-458, 104th Cong., 2d Sess. 113 (1996) (emphasis added).

⁷ See, e.g., *International Settlements Policy Reform; International Settlement Rates*, IB Docket No. 96-261, *First Report and Order*, 19 FCC Rcd 5709, 5729 (2004) (“[W]e believe that competitive markets can generally constrain harmful behavior better than regulation”). See also *Verizon Wireless’s Petition for Partial Forbearance from the Commercial Mobile Radio Services Number Portability Obligation; Telephone Number Portability*, WT Docket No. 01-184 and CC Docket No. 95-116, *Memorandum Opinion and Order*, 17 FCC Rcd 14972, 14998 (Separate Statement of Comr. Kevin J. Martin, Approving in Part and Dissenting in Part) (“I believe that competition is preferable to regulation. Market forces are the best method of delivering choice, innovation and affordability to consumers across the nation.”)

incumbent LECs and “may” be designated in the territories served by “rural” (*i.e.*, small) incumbent LECs.⁸

Thus, the Commission has statutory obligation as well as a practical imperative to ensure that its universal service system is consistent with today’s competitive telecommunications marketplace. The best way to do this is by adopting a high cost reform plan that promotes competitive choice and determines support based on an objective measure of cost.

B. Rural LECs Are Not the Key to Rural Economic Development or Broadband Deployment

Reading the rural LECs’ comments also would lead one to believe that economic development and broadband deployment in rural areas depend upon them and their investments. Nothing could be further from the truth. As some rural LEC comments even acknowledge, rural consumers have made clear in the marketplace their preference for mobile services.⁹ These commenters’ observation that mobility is not a supported service¹⁰ is just as irrelevant as the fact that broadband, too, is not a supported service. The Commission long has acknowledged,¹¹ as

⁸ 47 U.S.C. § 214(e). Although rural incumbent LECs often attempt to make much of the distinction between the directive language for designating competitive ETCs in non-rural areas and the permissive language for such designations in rural areas, the important point is that the Act specifically contemplates the designation of competitive ETCs in all areas of the country.

⁹ *See, e.g.*, Balhoff and Rowe comments at 31 (“Customers have expressed in the marketplace their desire for mobility and flat rate long distance service. However, neither mobility nor long distance is a covered service for purposes of Section 254.”); *see also* Montana Independent comments at 3 (“MITS member companies are almost as concerned about how their wireless and broadband services will fare under ‘reformed’ universal service support mechanisms as they are about their basic wireline voice services.”).

¹⁰ *See id.*

¹¹ *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, *Order and Order on Reconsideration*, 18 FCC Rcd 15,090, 15,096-97 (2003) (“*Supported Services Order*”) “the network is an integrated facility that may be used to provide both supported and non-supported services,” and the Commission is committed to “ensuring that appropriate policies are in place to

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the rural LECs also observe,¹² that the expansion and improvement of the network to provide supported services also improves customers' access to advanced services, such as broadband.

This principle is equally true for mobile carriers. Dobson was the first predominantly rural carrier to complete the overlay of its GSM network with GPRS/EDGE technology to provide high-speed data services. Dobson has deployed this capability throughout its licensed service area – including in some of the most rural areas of the country. These areas include many rural customers that are not passed by cable and are too far from the central office for the provision of DSL. For these rural customers, wireless carriers like Dobson provide a vital opportunity to receive high-speed data services – along with the mobility that consumers (particularly rural consumers) clearly desire.

In sum, wireless networks are at least as important as wireline networks to rural economic development, access to advanced services, and comparability of service between rural and urban areas.¹³ Dobson urges the Joint Board to bear this in mind as it considers proposals to reform high cost support in rural areas. The Joint Board should feel no obligation to prop up outmoded LEC business models with monopoly-era regulatory structures such as embedded cost support or rate of return regulation. Rural carriers – and most importantly rural *consumers* – will be best served by a modern, competitive, streamlined universal service system.

encourage the successful deployment of infrastructure capable of delivering advanced and high-speed services.”).

¹² See, e.g., Balhoff & Rowe comments at 13-14; Montana Independent comments at 2.

¹³ See also Rural Cellular comments at 2-4.

II. REFORM OF THE HIGH COST MECHANISMS IMPLICATES INTERCARRIER COMPENSATION ISSUES

The comments in this proceeding, as well as the Commission's Intercarrier Compensation proceeding, demonstrate that questions regarding the appropriate determination of high cost support amounts will depend, in part, on resolution of intercarrier compensation issues.¹⁴ Questions about portability of support to competitive ETCs, in turn, are fundamentally linked to the methodology for determining support amounts, and arise out of the current system's use of wireline costs to determine support. Thus, in order to select a methodology for determining high cost support or resolve portability questions, the Joint Board and the Commission will have to grapple with intercarrier compensation reform.

Despite the Commission's efforts over the past decade to strip implicit subsidies out of the access charge regime and replace them with implicit universal service support,¹⁵ incumbents still assert that their access charges include universal service support, and therefore argue that explicit support must be provided if their access charges are reduced.¹⁶ It is not surprising that these carriers would argue that their access rates are high because of universal service needs, not simply because they are overpriced, and Dobson has urged the Commission to reject these arguments.¹⁷ As long as the incumbent LECs continue to claim that their intercarrier payments include contributions to universal service support, however, it will be impossible to implement

¹⁴ See, e.g., USTelecom comments at 11; Minnesota Independent comments at 8-9; Nebraska Rural comments at 14; Home Telephone comments at 3.

¹⁵ See, e.g., *Universal Service First Report & Order*, 12 FCC Rcd at 8784 ("Today, universal service is achieved largely through implicit subsidies.").

¹⁶ See, e.g., Comments of Intercarrier Compensation Forum, CC Docket No. 01-92 (filed May 23, 2005) at 32 (calling for the creation of two new support mechanisms to replace access revenue).

¹⁷ See, e.g., Ex parte letter of Dobson Communications Corporation, CC Docket No. 96-45 (filed Feb. 15, 2005) at 2.

meaningful high cost reform without addressing intercarrier compensation and high cost reform as a cohesive whole.

The interrelationship between the methodology for determining support and the removal of implicit subsidies from access charges already can be seen in the debate in this record regarding the portability of the “access-replacement” high cost support mechanisms, Local Switching Support (“LSS”) and Interstate Common Line Support (“ICLS”). Some commenters argue that permitting competitive ETCs to receive support from these mechanisms constitutes a “windfall” because LSS and ICLS were established to replace implicit support from the interstate access rate structure with new, explicit universal service support.¹⁸ They point out that wireless carriers generally have not been permitted to tariff access charges, and therefore argue that these support mechanisms represent “new” revenue for wireless ETCs but not for incumbents. These commenters fundamentally miss the point. LSS and ICLS revenue is not a “windfall” to *any* ETC precisely because it is a replacement for high cost support that previously was implicit in

¹⁸ Balhoff & Rowe Comments at 18 (“There was one ‘windfall’ or new support, however, and it was created by the move to explicit access support”); ICORE Comments at 10-11 (“for rural LECs, high cost support is cost-dependent. . . . Only those which serve relatively small quantities of lines have high enough per line or per minute switching costs to warrant receipt of LSS. Wireless ETCs have no such cost-related tests to pass.”); *see also* Fairpoint Comments at 6 (“Basing embedded cost support on each carrier’s own costs would prevent windfalls to competitive ETCs with lower cost structures than incumbents”); ICORE Comments at 11 (“It is not competitively neutral to award high-cost support to ETCs on the same per line basis as the LEC”); OPASTCO Comments at iv (“if the Joint Board wishes to address the growth in the rural High-Cost program,” it must “eliminate the wasteful payout of windfall support amounts that threaten the Fund’s viability”); Rural Independent Competitive Alliance Comments at 3 (supporting the USERP and the Three Stage Reform plan because they “both address the problem of windfalls which accrue to a CETC with costs below that assumed by the support level. . . .”).

access rates.¹⁹ If LSS and ICLS represent necessary support for ensuring universal service in high cost areas, then that support should be available to competitive ETCs as well as incumbents on a non-discriminatory, competitively neutral basis (at least until a more rational system of determining support amounts is devised).²⁰ Conversely, if these support mechanisms truly are part of the access charge regime, then they should not be recovered through universal service.

As this discussion reveals, these apparent questions about portability are, in fact, debates about how high cost support amounts should be determined. For the sake of the sustainability of the fund, Dobson urges the Joint Board and the Commission not to succumb to any more self-serving LEC claims to convert bloated access charges into universal service support. But if it is determined that a portion of current access revenue is necessary to support universal service, there is no basis to deny such support to all ETCs that win customers in the high cost area.²¹

Ultimately, this discussion demonstrates why all support amounts should be determined solely with reference to an objective measure of cost, such as a forward-looking model of the

¹⁹ See *Federal-State Joint Board on Universal Service*, 12 FCC Rcd 8776, 8939-41 (1997); *MAG Plan*, 16 FCC Rcd 19613 ¶ 128.

²⁰ Centennial Communications Comments at 5 (“Giving one carrier more money than another – or giving one carrier some money, and others none at all – puts the government’s thumb on the competitive scales, openly and blatantly, in favor of the carrier getting more money.”); see also Dobson Comments at 21; CTIA Comments at 7 (“Competitive markets work best when consumers, not regulators, decide what services to purchase from which providers”); Sprint Nextel Comments at 7-8 (“Proposals that do not provide full portability of funds only exacerbate inefficiencies in the current system by allowing incumbent LECs to retain inefficient operating practices, and distort market signals that could allow for new competitors in those markets. Such market distortions only serve to impede effective competition and harm consumers, in direct contravention of both the spirit and letter of Section 254”).

²¹ See *Federal-State Joint Board on Universal Service*, 12 FCC Rcd 8776, ¶ 48 (principle of competitive neutrality is embodied in Section 254(f)'s requirement that universal service support be explicit).

least-cost technology to serve a particular high cost area.²² An objective determination of support will put to rest thorny questions about portability, and also result in greater efficiency and transparency.²³

III. THE COMMENTS REVEAL BROAD OPPOSITION TO GIVING STATES PRIMARY RESPONSIBILITY FOR ALLOCATING SUPPORT

The comments in this proceeding are almost unified in their opposition to any proposal to give state commissions responsibility for allocating support among ETCs in the state.²⁴ Indeed, of the commenters addressing this issue only three comments (one carrier and two state commission filings) offered support for the state allocation approach.²⁵ Perhaps most telling is the distinct lack of interest on the part of state commissions in this issue. Only seven state commissions filed comments at all,²⁶ and of those only the Maine, Vermont, Missouri commissions supported the proposals.

²² See Dobson comments at 2-7.

²³ *Id.*

²⁴ See, e.g., Dobson Comments at 12-19; CTIA Comments at 13-18; Sprint Nextel Comments at 12-15; Fairpoint Comments at 12; Frontier Comments at 9-12; Montana Independent Telecommunications Systems Comments at 4-9; National Telecommunications Cooperative Association Comments at 7-11; OPASTCO Comments at 7-11; Sandwich Isles Comments at 5-6; Telecom Consulting Associates Comments at 2-5; ACS Comments at 22-25; Texas Statewide Telephone Cooperative Comments at 4-7; NASUCA Comments at 27-30;

²⁵ Qwest Comments at 14-16; Maine PUC and Vermont PSC Comments at 3 (“We support the basic concept . . . that states should have direct control over distributions of federal universal service support”); Missouri PSC Comments at 3-5 (“The majority of the MoPSC supports the ‘block grant’ concept of transferring federal universal service accounts to states for oversight and disbursement pursuant to guidelines established by the FCC”).

²⁶ The state commissions filing comments were: the Iowa Utility Board; the Maine Public Utilities Commission; the Vermont Public Service Board; the Nebraska Public Service Commission; the Oregon Public Utility Commission; the Public Service Commission of Missouri; and the Regulatory Commission of Alaska. The National Association of Regulatory Utility Commissions did not file comments at all.

In sum, the comments overwhelmingly oppose any proposed “block grant” approach to allocating universal service support. Consistent with Dobson’s position, the comments reveal the a significant state allocation role will result in significant uncertainty and will increase administrative burdens associated with allocating universal service support.²⁷ Further, there are serious legal concerns regarding the legality of such actions.²⁸ The “block-granting” approach would leave the Commission with an insufficient role to ensure that its statutory responsibilities under Section 254 of the Act are met.²⁹ Moreover, under the D.C. Circuit’s *USTA II* decision

²⁷ See, e.g., Dobson Comments at 14 (“states lack the necessary experience to implement competitively neutral policies that ensure comparability of *services* and *technologies*”); CTIA Comments at 17 (“Under the *Public Notice* proposals, carriers seeking universal funding would be required to apply for and comply with regulations in over 50 different jurisdictions in the country”); CenturyTel Comments at 5 (the block grant “proposals would generate only illusory savings and create uncertainty that could be devastating to infrastructure investment in rural communities”); Texas Statewide Telephone Cooperative Comments at 8 (“Replacing the existing federal high cost support mechanism with block grants creates uncertainty for the rural LECs, especially if the allocations and distributions are to be determined by the individual states without specific Commission guidelines”); OPASTCO Comments at 9 (“a block grant system would create an unwelcome sense of uncertainty that would surely inhibit rural LEC’s investment in infrastructure”); NASUCA Comments at (“is a system where state regulators have discretion to allocate federal universal service funds any more – or in fact, less – predictable” than the current system?).

²⁸ See, e.g., Frontier Comments at 10 (“Allowing each state regulatory authority to create its own distribution principles and rules would destroy the principle of predictability” established in Section 254(b)(5) of the Act); TDS Comments at 8-9 (“Implementing a block grant program as contemplated by the proposals would also run afoul of the substantive principles the statute establishes for the federal universal service program”); National Telecommunications Cooperative Association Comments at 8 (“Granting authority to state commissions to determine the amount of federal universal service support a carrier would receive would violate the Act and the Tenth Amendment”); NASUCA Comments at 29 n.100 (“The SAM is not specifically authorized by Section 254 of the Act, and it is not clear that the FCC possesses the ability to perform such a subdelegation of its USF responsibilities”).

²⁹ See, e.g., Dobson Comments at 12 (“These proposals, in every case, would leave the Commission too little discretion to determine the distribution of *federal* high-cost support, and insufficient means to ensure that the substantial responsibilities that the Act places upon the Commission are fulfilled”); Sprint Nextel Comments at 13-14 (block grants “must be rejected as inconsistent with Section 254(b)(5), which requires that universal service mechanism be

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these statutory duties imposed by Congress cannot be delegated to the states as a matter of law. *USTA II* states that “federal agency officials ... may not subdelegate to outside entities – private or sovereign – absent affirmative evidence of authority to do so.”³⁰ No part of Section 254, however, gives the FCC authority to delegate to the states its duties to ensure that universal service is explicit and sufficient, that support is being used for its intended purposes, or that reasonably comparable services are being provided to rural consumers.

In sum, the comments reveal that delegating to the states discretion to allocate universal service support is unlawful and unworkable. The Joint Board therefore should not recommend such an approach to the Commission.

‘specific’ and ‘predictable’”); CTIA Comments at 13 (“the broad delegations contemplated in the proposals would leave the FCC without sufficient means to ensure the fulfillment of its statutory responsibilities, including ensuring reasonable comparability of rates and services between the states”).

³⁰ *United States Telecom Assoc. v. FCC*, 359 F.3d 554, 566 (D.C. Cir. 2004).

CONCLUSION

Dobson urges the Joint Board to recommend revisions to the high cost support mechanisms consistent with Dobson's comments in this proceeding.

Respectfully submitted,

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